IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1212 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PETHABHAI DAYABHAI VAGHELA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 1212 of 2004

MR PJ MALKAN for Petitioner No. 1-10

MR PR ABICHANDANI, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 07/12/2004

ORAL JUDGEMENT

1. Heard learned Advocate Mr.P.J.Malkan for petitioners and learned APP Mr.P.R.Abichandani for respondent State. RULE. Learned APP Mr. Abichandani waives for respondent. Upon request of learned Advocates for the parties, the Rule was heard forthwith.

2. This is a petition filed under Section 482 of the Code of Criminal Procedure by the petitioners for quashing the orders passed by the Trail Court, to deliver the custody of the petitioners to the Police on remand for about 24 hours.

3. The offence came to be registered against the petitioners on 28th of September, 2004 at Dhrangadhra Police Station, being Crime Register No.I - 115 of 2004, under Sections 147, 148, 149, 332, 186, 188, 504(2), 506(2) of the Indian Penal Code and under Section 3(7) of the Prevention of Damage of Public Property Act, 1984. Complainant Jayeshbahi Umiyashankar Dave, an employee of Gujarat Electricity Board, alleged in the complaint that all the accused of the FIR entered into the prohibited area of Gujarat Electricity Board, and after quarrelling and uttering abuses, cut the telephone wires on 28th of September, 2004 at about 2.30 hours. Petitioners approached this Court under Section 438 of the Criminal Procedure Code by filing Criminal Misc. Application No. 10069 of 2004, and this Court, vide order dated 29th of October, 2004, was pleased to release each of the accused petitioners on anticipatory bail on condition that they shall make themselves available for interrogation by a Police Officer, whenever and wherever required. Accordingly, thereafter, police submitted an application before the Judicial Magistrate, First Class, Dhrangadhra, in said Crime Register No.I - 116 of 2004 for obtaining custody of the petitioners on remand. Learned Judicial Magistrate, First Class, Dhrangadhra, vide his order dated 6th of November, 2004, was pleased to allow the Application of the police partly and upto 4.00 p.m. of 7.11.04 remand of the petitioners to the police custody were granted. It appears that thereafter this Application is filed for quashing and setting aside the said order passed by the learned Judicial Magistrate, First Class, Dhrangadhra.

4. This being an interlocutory orders, barred by sub-section (3) of Section 397 of the Criminal Procedure Code, so far as the Revision is concerned. The law is settled that when such a bar is put up by the statute, application under Articles 226/227 of the Constitution of India as well as under Section 482 of the Code of

Criminal Procedure would be maintainable only in very exceptional circumstances. On going through the record as well as contentions of the learned counsels for the parties, it appear that there are very exceptional circumstances of this case. Firstly, while releasing the accused on bail by this Court under Section 438 of the Criminal Procedure Code though it was permitted that the petitioners shall themselves available for interrogation by a Police Officer, the issue has arisen whether the custody of petitioners are required to be delivered to the police for remand. Having regard to the accusation made in the First Information Report and having regard to the fact that this Court considered the case while dealing with the application under Section 438 of the Criminal Procedure Code, it is not at all necessary that the investigation would remain incomplete without custodial interrogation. This aspect, however, could not properly be appreciated by learned Judicial Magistrate, First Class, Dhrangadhra, which is the gross error apparent on the face of record, resulting miscarriage of justice, which ultimately justifies maintainability of this petition, as above said. It is also pertinent to note that while passing order for releasing the petitioners on anticipatory bail, they were directed by this Court to remain present at Dhrangadhra Police Station on 3rd of November, 2004 between 9.00 a.m. to 09.00 p.m. and accordingly they have attended Dhrangadhra Police Station.

5. In the above view of the matter, the order directing the police custody in respect of the petitioners as passed by learned Judicial Magistrate, First Class is required to be set aside.

6. In the result, this Application is allowed. The order impugned in this petition passed by the learned Judicial Magistrate, First Class, Dhrangadhra, on 6th of November, 2004, is quashed and further each of the petitioner is directed to co-operate Investigation Agency in investigation of the offences, and each of the petitioner shall make themselves available for interrogation by the Investigation Officer whenever they are called to do so, till charge-sheet is filed. This application stands disposed of with this order. Rule is made above to the above extent. DS permitted.

(J.R. Vora, J.)

p.n.nair